

STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE
AND
THE MAINE RULES OF SMALL CLAIMS PROCEDURE

Docket Nos. SJC-11 & 326

Effective: July 1, 2007

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure and the Maine Rules of Small Claims Procedure, are hereby adopted, prescribed, promulgated, and amended, to be effective July 1, 2007.

The specific rules amendments are set forth below. To aid in understanding of the amendments, Advisory Notes appear after the text of the amendments. The Advisory Notes state the reason for recommending the amendment, but the Advisory Notes are not part of the amendment adopted by the Court.

1. Rule 80K of the Maine Rules of Civil Procedure is amended by adding a new subdivision (k) to read as follows:

(k) Alternative Dispute Resolution: Alternative Dispute Resolution, as agreed to by the parties or as required by law, shall be conducted pursuant to the processes specified in Rule 92.

2. Rule 92 of the Maine Rules of Civil Procedure is adopted as follows:

RULE 92

COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE

This rule shall govern the operation of the Court Alternative Dispute Resolution Service established pursuant to 4 M.R.S. § 18-B.

(a) Alternative Dispute Resolution in General Civil Actions.

(1) Rule 16B Referrals in the Superior Court. Unless exempted, all contested civil actions filed in or removed to the Superior Court are subject to the alternative dispute resolution (ADR) process specified in Rule 16B.

(2) Referees. Rule 53 governs reference of cases in the Superior Court or the District Court, including reference of family matters.

(3) CADRES Referrals Not Otherwise Governed. By agreement of the parties or in the court's discretion upon a finding of good cause, any civil action not otherwise governed or exempted by statute, rule, or order, may be referred to ADR through the Court Alternative Dispute Resolution Service ("CADRES") or another ADR agreed to by the parties. The following applies to civil actions referred to ADR through CADRES:

(A) Administrative Fee. If the referral is made through CADRES, the parties shall pay an administrative fee of \$20.00 to the clerk, which fee shall be shared equally by the parties and collected by the clerk, unless in forma pauperis status has been granted pursuant to Rule 91;

(B) Notification to CADRES. Upon payment of the administrative fee, the clerk shall notify CADRES of payment and send a copy of the referral order to CADRES;

(C) Selection of Provider. Except when proceeding pursuant to Rule 16B or Rule 53, in actions referred to mediation or another form of ADR through CADRES, the parties shall select their ADR provider from the roster approved by CADRES;

(D) Date and Location of ADR. Once selected, the ADR provider shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. ADR may take place at a courthouse, if space is available and if authorized by the clerk; and

(E) Compensation to Provider. The parties and the ADR provider shall negotiate and agree on compensation for services, and such compensation shall be paid directly to the ADR provider.

(b) Mediation of Family Matters.

(1) Mediation Required. All contested divorce, parental rights, judicial separation, and child support actions shall be referred to mediation, unless mediation is waived pursuant to 19-A M.R.S. § 251(2)(B).

(2) Mediation Optional. Actions for visitation rights of grandparents, emancipation of minors, paternity, and motions to modify a preliminary injunction, motions to enforce a judgment, and motions for contempt may be referred to mediation.

(3) Mediation Not Available. Protection from abuse and protective custody actions (other than those that may be specially referred or included in a pilot mediation program) are not subject to referral to mediation.

(4) Court Defined. As used in this subdivision (b) of the Rule, the term “Court” includes a Justice, Judge or Family Law Magistrate.

(5) CADRES Referral. In all contested family matters referred to mediation through CADRES, the following shall apply:

(A) Date and Location of Mediation. Mediation shall occur prior to the assignment of a hearing date unless otherwise ordered by the court. Mediation shall be scheduled to occur within 28 days of the order for mediation, unless otherwise ordered by the court. Mediation shall be held at a courthouse, unless otherwise authorized by the court or the Director of CADRES;

(B) Mediation Fee. A mediation fee as set by the court shall be paid by the date ordered, which shall be before the mediation or when mediation is requested by a party. The fee entitles the parties to two mediation sessions. An additional mediation fee is due for any further mediation. When a mediation session is not held due to failure of one or more participants to appear, the court may reschedule the mediation session at no additional cost and/or impose sanctions. No mediation

fee is required for mediation of motions solely to enforce child support orders or when mediation is requested by the Department of Health and Human Services;

(C) *Apportionment and Payment of Mediation Fee.* The mediation fee shall be shared equally by the parties, unless otherwise ordered by the court. In ordering payment of the mediation fee, the court shall specify the amount due by each party with a payment date;

(D) *Assignment of Mediators.* Mediators on the Domestic Relations Mediation Roster shall notify the clerk of the courts to which they are assigned by CADRES of the dates and times at which they are available to mediate. The clerks shall assign mediation to eligible rostered mediators on a rotating basis that is generally equitable over time. If a party or attorney requests assignment of a specific mediator, the clerk shall attempt to honor that request to the extent practicable. If a party or attorney objects to the assignment of a certain mediator, the clerk shall honor that request and assign a different mediator. At least twice annually, CADRES shall supply to every District Court a current list of mediators on the Domestic Relations Mediation Roster for that court;

(E) *Attendance at Mediation.* Each party and their attorney, if any, shall be present at mediation and shall make a good faith effort to mediate all disputed issues. In exceptional circumstances, a party may participate by telephone with the prior approval of the court. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions;

(F) *Exchange of Information.* If any financial issues, including child support, spousal support, or property division are contested, each party shall complete and file with the court, with a copy to the other party, a properly completed Child Support Affidavit, Child Support Worksheet and Financial Statement. When required, these documents shall be filed with the court at least three (3) business days prior to the scheduled mediation; and

(G) *Continuances.* A party requesting a continuance of a mediation session shall file a written motion with the clerk at least four (4) days in advance of the scheduled mediation, and shall otherwise comply with the requirements of Rule 40(c), including the requirement that the motion to continue or cancel a scheduled mediation must be filed immediately after the cause or grounds becomes known.

All continuance requests shall be heard and ruled on by the court. A mediator may not grant a continuance for mediation or reschedule a mediation session.

(c) Mediation of Small Claims.

(1) Mediation Required. The parties to all Small Claims cases may be required to participate in mediation as ordered by the court. This requirement does not apply to Small Claims disclosure actions, which are not subject to referral to mediation.

(2) Date and Location of Mediation. Mediation shall take place on the hearing date, unless all parties agree to hold mediation prior to the hearing date, and CADRES is able to arrange for mediation. Mediation shall take place at a courthouse, unless otherwise authorized by the court or the CADRES Director.

(3) Mediation Fee. The mediation fee is included in the small claims filing fee, and no additional fee is required for mediation.

(4) Assignment of Mediators. The clerk of court, or a designee, shall notify CADRES of all dates on which the Small Claims docket is to be scheduled, as well as any subsequent scheduling changes. CADRES shall assign one or more mediators to provide mediation services at every scheduled Small Claims docket. At least twice annually, CADRES shall supply to every District Court a current list of Small Claims mediation assignments, as well as a current list of mediators on the Small Claims Mediation Roster.

(5) Continuances. All requests for continuance of mediation or a hearing date shall be presented to and ruled on by the court. A mediator may not grant a continuance for mediation or a hearing date in a Small Claims case.

(d) Mediation of Land Use and Natural Gas Pipeline Matters.

(1) Referral to Mediation. All requests for mediation of land use or natural gas pipeline matters pursuant to 5 M.R.S. §§ 3341 or 3345 shall be referred to CADRES upon the filing of an application with the Superior Court as required by 5 M.R.S. §§ 3341(4) and 3345(4). The original application will be docketed and retained by the clerk in an “SA” file, and a copy sent to the CADRES Director. In

addition to these statutory land use matters, any case involving a land use dispute may be referred to CADRES at the discretion of the court or on request of the parties.

(2) *Date and Location of Mediation.* Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(3) *Mediation Fee.* As established by 5 M.R.S. §§ 3341(2) and 3345(2), the fee for the initial land use and natural gas pipeline mediation session is \$175.00 for up to four (4) hours of mediation, payable by the landowner who submits the application. Additionally, the CADRES Director shall determine the cost of providing notice, if any, which the landowner shall pay prior to the scheduling of mediation. If subsequent mediation sessions occur, the parties and mediator shall agree on an appropriate fee arrangement.

(4) *Selection of Mediator.* The parties shall choose their mediator from the Land Use and Environmental Mediation Roster list provided by CADRES. A list of mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(e) Mediation of Environmental Enforcement Actions.

(1) *Referral.* All requests for mediation pursuant to 38 M.R.S. § 347-A shall be referred to CADRES upon the receipt of a request from a party.

(2) *Mediation Fee.* Pursuant to 38 M.R.S. § 347-A, the fee for environmental enforcement mediation is \$120.00. If an action pursuant to Rule 80K is not already pending, the additional applicable filing fee is required. Notwithstanding the general exemption for state agencies from payment of fees, the State of Maine Department of Environmental Protection (DEP) shall pay one-half of the fee and may pay the entire fee. The DEP is exempt from payment of any filing fee.

(3) *Selection of Mediator.* The parties shall choose their mediator from a Land Use and Environmental Mediation Roster provided by CADRES. A current

listing of the mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(4) *Date and Location of Mediation.* Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(f) Sanctions.

If a party or party's attorney fails to appear at mediation or other ADR process scheduled pursuant to this Rule, or fails to comply with any other requirement of this Rule or any court order issued pursuant to this rule, the court may, upon motion of a party or on its own motion, order the parties to submit to mediation or other ADR, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or attorney, or both, to pay reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the court finds that an award would be unjust in the circumstances.

3. Rule 5 of the Maine Rules of Small Claims Procedure is amended to read as follows:

At the time set for hearing, the court may require the parties to meet in order to attempt to settle their dispute. ~~The services of a mediator, if available, may be utilized by agreement of the parties.~~ Mediation shall be conducted pursuant to the process established by Rule 92(c) of the Maine Rules of Civil Procedure. Every settlement resulting from mediation shall be submitted for court approval, and the court shall give its approval to every reasonable settlement. An approved settlement shall have the force and effect of a judgment and may not be appealed. If mediation efforts fail or mediation proves inappropriate, or if the mediated settlement is unreasonable, the court shall hear the matter without undue delay.

4. These amendments shall take effect July 1, 2007.

Such rules as thus adopted and amended shall be recorded in the Maine Reporter.

Dated: May 22, 2007

_____/s/
LEIGH I. SAUFLEY
Chief Justice

_____/s/
ROBERT W. CLIFFORD
Associate Justice

_____/s/
DONALD G. ALEXANDER
Associate Justice

_____/s/
SUSAN CALKINS
Associate Justice

_____/s/
JON D. LEVY
Associate Justice

_____/s/
WARREN M. SILVER
Associate Justice

_____/s/
ANDREW M. MEAD
Associate Justice

Advisory Notes—May 2007

The proposed addition of Rule 92 to the Maine Rules of Civil Procedure implements the requirement of 4 M.R.S. § 18-B(9) that the Supreme Judicial Court adopt rules governing the referral of cases to the Court Alternative Dispute Resolution Service (“CADRES”). It also consolidates rules that formerly appeared in the Uniform Domestic Relations Administrative Order (JB-00-05) and the Rules for Referral to CADRES, and it provides the public with an initial point of reference to navigate Alternative Dispute Resolution (ADR) options in the court system.

Rule 92 addresses mediation in general civil actions, family and domestic relations matters, small claims cases, cases involving land use and natural gas pipeline location issues, and Department of Environmental Protection enforcement matters. The Rule includes a subdivision (f) providing for sanctions for non-compliance with ADR rule requirements or court orders implementing ADR requirements. Subdivision (f) does not limit a court’s inherent authority to impose sanctions on misconduct or the court’s general authority to impose sanctions pursuant to M.R. Civ. P. 11 or 66.

The Rule is supported by conforming amendments to M.R. Civ. P. 80K and to Rule 5 of the Maine Rules of Small Claims Procedure.